

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ANTHONY HORTON,

Plaintiff,

v.

9:19-CV-0552  
(GTS/ML)

ADAIR,

Defendant.

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APPEARANCES:

ANTHONY HORTON  
Plaintiff, Pro Se  
06-A-5568  
Auburn Correctional Facility  
P.O. Box 618  
Auburn, NY 13021

GLENN T. SUDDABY  
Chief United States District Judge

**DECISION and ORDER**

Plaintiff Anthony Horton commenced this action by filing a pro se complaint for relief pursuant to 42 U.S.C. § 1983, and thereafter an application to proceed in forma pauperis, a motion for appointment of counsel, two letter motions for preliminary injunctive relief, and a third motion for preliminary injunctive relief. Dkt. No. 1 ("Compl."); Dkt. No. 3 ("First Preliminary Injunction Motion"); Dkt. No. 5 ("IFP Application"); Dkt. No. 8 ("Second Preliminary Injunction Motion"); Dkt. No. 9 ("Motion for Counsel"); Dkt. No. 16 ("Third Preliminary Injunction Motion"). By Decision and Order filed on September 24, 2019,

plaintiff's IFP Application was granted and, after screening the complaint in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), some of plaintiff's claims and some of the named defendants were dismissed, and service was directed for the claim against defendant Adair that survived sua sponte review. Dkt. No. 17 ("September 2019 Order").<sup>1</sup> Following the September 2019 Order, a summons was issued for defendant Adair. Dkt. No. 18.

Presently before the Court is a letter from plaintiff dated October 1, 2019, in which he states as follows:

Please cease and desist with all action wherein regards to plaintiff's suit. More importantly do not forward copies of plaintiff's complaint to defendant, plaintiff wishes to withdraw his complaint; with the full understanding that he the plaintiff still or [sic] owes to the Court \$350.00 to cover cost of filing fee.

Dkt. No. 19 at 1.<sup>2</sup> Plaintiff has also attached to his letter a document that is captioned "Motion For Leave To File An Amended Complaint," wherein plaintiff asks the Court to "cease with any proceedings . . . regard[ing] . . . plaintiff's civil suit" and discontinue efforts to serve the defendant, and states that if plaintiff "should . . . suffer further harm beyond that of July 21, 2019[, he] will make the matter a state issue of claim." *Id.* at 3-5.

The Court construes plaintiff's letter and attached motion as an application seeking voluntary dismissal of this action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. Rule 41(a) provides in relevant part that a "plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an

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<sup>1</sup> The Court also denied plaintiff's motions for injunctive relief and motion for counsel. See September 2019 Order at 23.

<sup>2</sup> Plaintiff's letter separately asks whether defendant Adair has been served. Dkt. No. 19 at 1.

answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). Since defendant Adair has not answered or moved for summary judgment, plaintiff is entitled to voluntary dismissal of this action without prejudice, without further order of the court, upon the filing of such a notice.

In light of the foregoing, upon the filing of plaintiff's notice requesting to cancel this action, this action was dismissed, without prejudice, and an order of the court was not required in order to implement that dismissal.

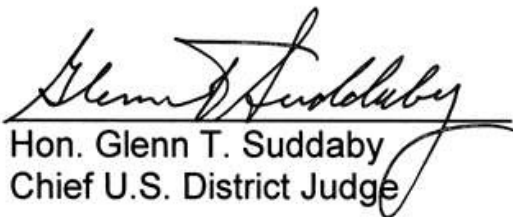
**WHEREFORE**, it is hereby

**ORDERED** that in accordance with plaintiff's notice (Dkt. No. 19) to voluntarily dismiss this action, the Clerk of the Court shall close this case and reflect that the action is voluntarily dismissed without prejudice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure; and it is further

**ORDERED** that the Clerk serve copies of this Decision and Order on the plaintiff and the Office of the New York State Attorney General.

**IT IS SO ORDERED.**

Dated: October 7, 2019  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
Chief U.S. District Judge